IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION 1220 /2003

PETITIONER : Ramgopal Rathore, aged about 55 years
S/o. Sukhram Rathore
R/o. Village Tendubhata
Tehsil Janjgir,
Distt.Janjgir-Champa

VERSUS

RESPONDENTS

1) State of Chhattisgarh
Through the Collector,
Janjgir-Champa

2) The Collector,
Janjgir-Champa

3) The Sarpanch,
Gram Panchayat,
Tendubhata,
Block Nawagarh (Janjagir)

4) Gram Panchayat Tendubhata,
Block Nawagarh (Janjagir)

P. R. No. 1067/03
Presented by Shri Meena Gupta
dated 20.11.03

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 1220/2003 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

1.2.2005

Shri Anoop Majumdar, Counsel for the petitioner.

Shri Sandeep Dubey, Panel Lawyer for the State/respondents No. 1 & 2.

Shri Prakash Tiwari, counsel for respondents No. 3 & 4.

Heard finally with the consent of the parties.

The case of the petitioner is that he was working as Sachiv/Panchayat Karmi of Gram Panchayat, Tendubhata, District-Janjgir-Champa since February 2000. The Collector (respondent No.2), vide order dated 28.5.2001 cancelled the appointment of the petitioner from the said post. Copy of the order is filed as Annexure P-1. The petitioner preferred an appeal against the said order before the Commissioner, Bilaspur (as it then was). The Commissioner stayed the execution of order dated 28.5.2001. Copy of said order passed by the Commissioner in Revenue Appeal No. 196/89-A-15/2000-2001 is Annexure-P-2.

The submission of learned counsel for the petitioner is that after passing of the aforesaid order of stay on 30.7.2001 by the Commissioner, the cancellation of appointment of the petitioner by the Collector was stayed and the petitioner was working on the said post of Secretary of the Gram Panchayat. He further submits that all of a

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

sudden, an order Annexure P-3 was passed by the Sarpanch of Gram Panchayat, which goes to show that the services of petitioner have been terminated by some resolution of Gram Panchayat dated 8.1.2003. This order/notice(annexure P-3) has been impugned in this petition.

Return has not been filed on behalf of the State Government, however, respondents No. 3 & 4 i.e. Sarpanch, Gram Panchayat, Tendubhata and Gram Panchayat, Temdubhata have filed an application for dismissal of the writ petition on the ground of having an alternative remedy against the impugned order, Annexure P-3.

I have heard learned counsel for the parties.

Learned counsel for the petitioner submits that since earlier order of cancellation of appointment of the petitioner was under challenge before the appellate authority, and the appellate authority has passed an order of stay in favour of the petitioner, therefore, a subsequent removal by the respondent was not in accordance with law as the same goes against the order of stay, granted in favour of the petitioner.

On the other hand learned counsel for respondents No. 3 & 4 submits that since the petitioner was not appearing in the meetings of Gram Panchayat as it appears from the Annexures R-1, R-2 & R-3, therefore only an order of removal was passed by the Gram Panchayat.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

He further submits that the subsequent removal of the petitioner is a fresh action and this cannot be linked with the earlier order passed by the appellate authority. He also submits that if a person commits a wrong even during the pendency of appeal in which an order of stay is granted in his favour, the subsequent wrong is to be noticed by the concerned authority and the concerned authority may proceed in accordance with law for this subsequent cause of action.

I have perused the documents Annexure R-1, R-2, R-3. These documents are the notices for appearance to the petitioner in the proceedings of Gram Panchayat. It has been mentioned in these documents that the petitioner refused to take notices. Since the petitioner refused to take notices for three times, an order of removal was passed against him by the Gram Panchayat. In the opinion of this Court, the procedure adopted by the gram Panchayat for removal of the Secretary/Panchayat Karmi is not in accordance with law. Even the procedure laid down to be adopted after a person refused to take notice has not been complied with in this case.

Proviso to sub-rule (d) of Rule 3 of the Madhya Pradesh(Chhattisgarh) Panchayat (Method of Service of Notice and Document) Rules 1995 laid down that if officer directing the issue of such notice or document is satisfied that the addressee is evading the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

notice or document and the notice or document can not be served by the methods mentioned as above, the said officer shall cause such notice or document to be served by affixing a copy thereof upon some conspicuous part of the last known place of residence or business of the person concerned and service shall be as effectual as if it had been made on the addresses personally.

If the notices sent by the Gram Panchayat was not received by the petitioner, then it was incumbent on the Panchayat to get him served through the process laid down in proviso to sub-rule (d) of Rule 3 of the aforesaid rules.

Not only this, as per the rules, laid down for removal of the Secretary and also under the provisions of the scheme for removal of Panchayat Karmi, a show cause notice is required to be issued to the said Secretary/Panchayat Karmi. This has also not been complied with in this case.

It appears that direct order of removal by a resolution of the Panchayat has been passed against the petitioner, which was passed during the period of stay granted by the appellate authority. This action of the Gram Panchayat is not in accordance with law. This shows high handedness on the part of the institution which is an important institution in the framework of democratic system of the society. The

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

simple doctrine of law is that no person can be condemned without giving an opportunity of hearing to him. The doctrine of "*audi alteram partem*" comes in the way. In the opinion of this Court, the order Annexure P-3 is not in accordance with law. The petition stands allowed.

The impugned order/notice Annexure P-3 is hereby quashed. The removal of the petitioner in pursuance of the resolution of Gram Panchayat dated 8.1.2003 is set aside.

Both the counsel informed to this Court that the appeal before the appellate authority is still pending. As an appeal before the appellate authority is still pending, the order of stay is in operation. It would be just and proper for this Court to make certain directions in relation to this appeal also. It is directed that if the appeal of the petitioner is pending before the appellate authority, the same shall be disposed of in accordance with law as early as possible preferably within a period of three months from the date of communication of this order to the said authority.

With the aforesaid observations, the petition is allowed.

Sd/-
Sunil Kumar Sinha
Judge

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